

EARLY CONSULTATION

1. Project Title:

Revision of Conditional Waiver Related to Timber Harvest and Vegetation Management Activities in the Lahontan Region and Identifying Single Environmental Protection Permitting Entity for Vegetation Management Activities in the Lake Tahoe Region.

2. Lead agency name and address:

California Regional Water Quality Control Board, Lahontan Region
2501 Lake Tahoe Blvd., South Lake Tahoe, CA 96150

3. Contact person and phone number:

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4. Project location:

All or parts of Modoc, Lassen, Plumas, Sierra, Nevada, Placer, El Dorado, Alpine, Mono, Inyo, San Bernardino, Kern, and Los Angeles counties

5. Project sponsor's name and address:

California Regional Water Quality Control Board, Lahontan Region
2501 Lake Tahoe Blvd., South Lake Tahoe, CA 96150.

6. Brief Description of Project:

The California Regional Water Quality Control Board, Lahontan Region (Lahontan Water Board), will be revising the existing Conditional Waiver of Waste Discharge Requirements for Timber Harvest and Vegetation Management Activities in the Lahontan Region (Existing Timber Waiver), Resolution No. R6T-2007-0008. Changes to the Existing Timber Waiver will include minor changes (i.e. grammar, document organization, and clarification of project activities and categories) and substantial changes (i.e. elimination of project notification to the Lahontan Water Board, transferring permitting actions to the Tahoe Regional Planning Agency, and reduction of monitoring and reporting requirements for certain types of vegetation management activities in the Lake Tahoe Region). For more information and details on the specific minor changes to the Timber Waiver, please refer to Table 1, *Proposed minor changes to Timber Waiver*. For more information and details on the substantial changes to the Timber Waiver, please refer to Table 2, *Proposed substantial changes to Timber Waiver*.

7. Agencies Involved:

The California Regional Water Quality Control Board, Lahontan Region (Lahontan Water Board) is responsible for protecting water quality in the Lahontan Region, which is defined by Water Code section 13200, subdivision (h). The authority of the Lahontan Water Board to regulate activities for the purpose of water quality protection is provided by the federal Clean Water Act (CWA), the Water Code, the Water Quality Control Plan for the Lahontan Region (Basin Plan), State Water Resources Control Board policies, and other federal and state laws and regulations.

The Lahontan Water Board has a statutory obligation under the Water Code to prescribe waste discharge requirements for activities that could affect the quality and beneficial uses of waters in the State within the Lake Tahoe Region and the greater Lahontan Region, pursuant to the Water Code section 13263, subdivision (a). The Lahontan Water Board has identified timber harvest and vegetation management activities as having a potential effect on water quality. Timber harvesting and vegetation management activities with the greatest potential to impact surface waters include: felling, yarding, and hauling of trees; road construction, reconstruction, and decommissioning; watercourse crossing construction, reconstruction, failure, and removal; slash removal and control burning; timber salvage logging following wildfire events; and herbicide applications. These activities can result in discharge, or threatened discharge, of waste (including, but not limited to, soil, silt, clay, and organic debris) into waters of the State, thereby potentially impacting water quality and beneficial uses of those waters. "Waste" is defined pursuant to Water Code section 13050, subdivision (d) and "waters of the State" is defined pursuant to Water Code section 13050, subdivision (e).

Water Code section 13260, subdivisions (a) and (c) require any person discharging waste, or proposing to discharge waste, that could affect the quality of waters of the State to file a report of waste discharge. As stated above, Water Code section 13263, subdivision (a) requires the Lahontan Water Board to prescribe waste discharge requirements for activities that could affect the quality and beneficial uses of waters of the State within the Lahontan Region. The provisions of Water Code sections 13260, subdivision (a) and (c); section 13263, subdivision (a); or section 13264, subdivision (a) may be waived by the Lahontan Water Board for a specific discharge or type of discharge if the Lahontan Water Board determines, after any necessary meetings, that the waiver is consistent with the Water Quality Control Plan for the Lahontan Region (Basin Plan) and is in the public interest pursuant to Water Code section 13269.

The Tahoe Regional Planning Agency (TRPA) was established in 1969, and is required by the Tahoe Regional Planning Compact (P.L. 96-551, 94 Stat. 3233, Cal Govt. Code 66801; NRC 277.200) to regulate activities that may have a substantial effect on natural resources of the Lake Tahoe Region¹. To protect these resources, the

¹ The "Lake Tahoe Region" is defined by Public Law 96-551, and includes lands in El Dorado and Placer Counties which are tributary to Lake Tahoe. It does not include the Alpine County Portion of the Lake

Compact directs TRPA to establish and ensure attainment of environmental standards for water quality, air quality, noise, recreation, soil conservation, wildlife habitat, vegetation preservation, scenic quality, and fisheries.

The TRPA, and the Lahontan Water Board, are responsible for implementing the bi-state Water Quality Management Plan for the Lake Tahoe Region ("208" Plan) and the TRPA is recognized as one of the implementing agencies for certain provisions of the Water Quality Control Plan for the Lahontan Region (Basin Plan) applicable to the Lake Tahoe Region.

In fulfilling its responsibilities, the TRPA regulates tree removal activities for environmental and aesthetic impacts. Individuals and agencies proposing to conduct vegetation management and tree removal activities within the Lake Tahoe Region must obtain approval and a tree removal permit from the TRPA, unless the TRPA has entered into a memorandum of understanding (MOU) establishing another entity as capable of permitting or proceeding with certain types of vegetation management activities.

8. The Existing Conditional Waiver of Waste Discharge Requirements for Discharges Resulting from Timber Harvest Activities in the Lahontan Region, Resolution No. R6T-2007-0008, "Timber Waiver."

The Lahontan Water Board has historically found it is either not against the public interest or is in the public interest to conditionally waive waste discharge requirements for timber harvest and vegetation management activities, as a specific type of discharge (or threatened discharge). Between 1988 and 2003, the Lahontan Water Board waived waste discharge requirements for timber harvest projects operating under approved Cal Fire Timber Harvesting Plans or Federal Timber Sales, according to Resolution No. 6-88-18, Waiver for Waste Discharge Requirements for Specific Types of Discharges. On January 8, 2003, upon the expiration of Resolution No. 6-88-18, the Lahontan Water Board adopted Resolution No. R6T-2003-0001, a Conditional Waiver of Waste Discharge Requirements for Discharges Related to Timber Harvest Activities in the Lahontan Region (2003 Timber Waiver). On February 14, 2007, the 2003 Timber Waiver was rescinded with the adoption of a renewed Timber Waiver, Resolution No. R6T-2007-0008 (Existing Timber Waiver). The existing Timber Waiver includes monitoring and reporting requirements for timber harvest and vegetation management activities determined by the Lahontan Water Board to pose a significant threat to water quality, pursuant to Water Code section 13269 (as amended January 1, 2005).

Tahoe watershed, but does include part of the Truckee River HU, between the Lake Tahoe outlet dam and the Bear Creek confluence. The Lake Tahoe Region boundaries are illustrated in Figures 5-3 and 5-4 in the Water Quality Control Plan for the Lahontan Region.

Timber harvest and vegetation management activities governed by the existing Timber Waiver include:

- (a) **Commercial timber harvest.** Commercial timber harvest and vegetation management activities include: silvicultural methods such as clearcutting, selection, commercial thinning, conversions, sanitation salvage, shelterwood treatment steps/treatments, seed tree seed and removal steps/treatments; pursuant to the California Forest Practice Rules and regulated by the California Department of Forestry and Fire Protection. Activities may include all those listed as "Timber Harvest Activities," as defined in the existing waiver.
- (b) **Fuel reduction and forest thinning activities.** Includes the removal and/or management of vegetation for the purposes of reducing hazardous wildfire risk associated with heavy vegetative fuel loading. Activities may include all those listed as "Timber Harvest Activities," as defined in the existing waiver.
- (c) **Riparian and aspen stand enhancement projects.** Consists chiefly of the removal of encroaching conifers from impacted meadows and riparian corridors. These activities may include all those listed as "Timber Harvest Activities," as defined in the existing waiver, and may be performed separately or in conjunction with fuel reduction and forest thinning activities, and/or riparian restoration projects.
- (d) **Utility and transportation corridor maintenance projects.** Consists of removal of trees and vegetation to maintain public services.

The existing Timber Waiver authorizes specific discharges associated with these timber harvest and vegetation management activities to proceed in compliance with the Water Code. The proposed Timber Waiver would cover timberlands and public lands within the Lake Tahoe Region and throughout the greater Lahontan Region, including both nonfederal lands (i.e., lands owned and managed by private landowners, the State of California, local governments, public utility districts, etc.) and federal lands managed by the U.S. Forest Service, the Bureau of Land Management, and the National Park Service.

Water Code section 13269, subdivision (e) provides that the California regional water quality control boards shall require compliance with the conditions pursuant to which waivers of waste discharge are granted. Therefore, the existing waiver includes enrollment and an application process for coverage under the Timber Waiver, except for defensible space projects near existing structures. The Lahontan Water Board uses the enrollment process to identify projects with a greater potential to impact water quality and track compliance with Timber Waiver conditions for these timber harvest and vegetation management activities.

9. Proposed Revisions to the Timber Waiver:

This project involves the revision, adoption, and implementation of the existing Conditional Waiver of Waste Discharge Requirements for Timber Harvest Activities in the Lahontan Region. Under the revised Timber Waiver the Lahontan Water Board will

continue to waive waste discharge requirements for specified discharges associated with timber harvest and vegetation activities within the Lake Tahoe Region and greater Lahontan Region. Similar to the existing timber waiver, this waiver will be conditional and may be terminated at any time by the Lahontan Water Board pursuant to Water Code section 13269, subdivision (a)(2). Lahontan Water Board staff propose the Lahontan Water Board make a determination that the timber harvest and vegetation management activities conducted in compliance with the conditions described within this revised Timber Waiver is consistent with any applicable state or regional water quality control plan and is in the public interest pursuant to Water Code section 13269, subdivision (a)(1).

The revisions to the existing Timber Waiver will include minor changes (i.e. grammar and document organization) and substantial changes (i.e. elimination of the need to obtain a permit from the Lahontan Water Board, the reduction or elimination of monitoring and reporting requirements for certain types of vegetation management activities in the Lake Tahoe Region). These changes, both minor and substantial, are designed to both protect water quality, further expedite fire protection efforts in the Lake Tahoe Region, and facilitate discharger compliance with timber waiver requirements region-wide.

These proposed revisions are being made in response to requests made by the Lahontan Water Board, the regulated public and agencies, and the California-Nevada Tahoe Basin Fire Commission. However, this proposed action is limited to recommended changes that can be made consistent with the current Water Quality Control Plan for the Lahontan Region (Basin Plan). Amending the Basin Plan will require additional environmental and scientific peer review. Because of the length of time involved in completing Basin Plan amendments, the Water Board will consider changes to the Basin Plan in a separate action at a future date.

All revisions made to the Timber Waiver will not deviate from existing policies and prohibitions of the existing Water Quality Control Plan for the Lahontan Region (Basin Plan), and the Water Code.

For a list of the proposed minor revisions to the existing Timber Waiver, please refer to the attached Table 1.

For a list of the proposed substantial revisions to the existing Timber Waiver, please refer to the attached Table 2.

Once comments from this early consultation have been received and considered, the proposed Revised Conditional Waiver of Waste Discharge Requirements for Discharges Related to Timber Harvest and Vegetation Management Activities (Timber Waiver) along with the Initial Study and Negative Declaration will be made available for a 30-day public review and comment period prior to consideration for adoption by the Lahontan Water Board, anticipated at the October 7-8, 2008 Lahontan Water Board meeting.

10. The Categorization of Timber Harvest and Vegetation Management Activities:

The existing Timber Waiver categorizes timber harvest and vegetation management activities based on land ownership, Cal Fire jurisdiction and permitting, and potential threat to water quality. The proposed substantial revisions to the Timber Waiver include changing the categorization system for timber harvest and vegetation management activities to a system based on potential impacts to water quality and level of completed project-level analysis pursuant to the California Environmental Quality Act (CEQA). Potential impacts to water quality for purposes of project categorization under the Timber Waiver will be determined by eligibility criteria and conditions stipulated within the Timber Waiver for each category. The eligibility criteria and conditions include project elements such as project area size, project purpose, land sensitivity, method of tree removal, type of equipment, proximity to water bodies, and road and landing construction. Projects eligible for coverage under the Timber Waiver will qualify under one of six categories.

11. Ensuring Compliance with the Timber Waiver:

The proposed revised Timber Waiver will conditionally waive the requirement of project proponents or land owners from having to file a report waste discharge or receive waste discharge requirements from the Lahontan Water Board for timber harvest and vegetation management activities if the proposed activities meet the eligibility criteria and conditions stated within the Timber Waiver pursuant to Water Code section 13269, subdivision (a)(2). However, a waiver application or other form of notification may be required. For Projects in the Lake Tahoe Region, it is anticipated that the Lahontan Water Board will waive notification requirements where oversight and permitting authority is undertaken by the Tahoe Regional Planning Agency.

The Lahontan Water Board may revoke individual project applicability under the Timber Waiver if project activities and discharges do not comply with the conditions and eligibility criteria of the waiver. Once project applicability under the Timber Waiver has been revoked, the project proponent must file a report of waste discharge, containing the information required by the Lahontan Water Board, in order to proceed with activities that would result in the discharge, or threatened discharge, of waste that could affect the quality of waters of the state, pursuant to Water Code section 13260, subdivision (a).

Other potential enforcement actions that may be taken by the Lahontan Water Board include: (1) the issuance of a Notice of Violation, which is an informal enforcement action which notifies the discharger of the violation of a waiver condition and the reasonably expeditious time within which compliance must be achieved to avoid further enforcement; (2) Notices to Comply; (3) Cleanup and Abatement Orders; (4) Cease and Desist Orders; (5) Time Schedule Orders; (6) Administrative or Judicial Civil Liability Orders; or (7) Referral to the California Attorney General's Office for appropriate legal action.

The Lahontan Water Board may pursue any of the above enforcement actions if conditions or eligibility criteria of the Timber Wavier are not met, and/or if impacts or threatened impacts to water quality or beneficial uses to waters of the State are observed.

12. Duration of the Proposed Project:

Pursuant to Water Code section 13269, subdivision (a)(2) this Timber Waiver may not exceed five years in duration and may be terminated at any time by the State Water Resources Control Board or by a California regional water quality control board.

Therefore within five years of adoption of this Timber Waiver, or upon termination, whichever is sooner, the Lahontan Water Board may either renew, terminate, or revise and adopt a new conditional waiver for timber harvest and vegetation management activities pursuant to Water Code section 13269, subdivision (a)(2).

13. Surrounding Land Uses and Setting:

The Timber Waiver would govern waste discharges resulting from timber harvest and vegetation management activities that meet certain conditions and eligibility criteria, throughout the Lahontan Region, with the exception of those activities covered by specific waste discharge requirements. The Lahontan Region is comprised of about 33,131 square miles of land, a significant portion of which is forestland. The region includes over 700 lakes, and over 3,000 miles of streams in eastern California, including the California portion of the Lake Tahoe Region. Surrounding land uses include rangeland grazing, recreation, mining, irrigated agriculture, energy production, water supply transport and storage, and urban uses.

14. Other Public Agencies Whose Approval is Required:

Receiving a waiver of waste discharge requirements under this proposed Timber Waiver does not preclude the requirement of the project proponent, land owner, or land manager from obtaining other required permits from other local, county, state, and/or federal agencies. Those proposing timber harvest or vegetation management activities most often will need to obtain other permits. On private timberlands, Cal Fire is the lead agency for issuing permits to timberland owners and operators harvesting timber within the Lahontan Region. On lands managed by the US Forest Service, approval to conduct timber harvest and vegetation management activities is only granted by the US Forest Service after preparing environmental documents to comply with the National Environmental Policy Act (NEPA). On lands owned and/or managed by the State of California (i.e. California Department of Parks and Recreation, California Tahoe Conservancy, and California Department of Transportation), approval to conduct timber harvest and vegetation management activities is only granted by the State land management agency after environmental analysis in compliance with the California Environmental Quality Act (CEQA) is completed.

15. Environmental Factors Potentially Affected:

The potential effects this project may have on the environmental factors listed below will be considered by Lahontan Water Board staff in preparing the Initial Study for this project.

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| <input type="checkbox"/> Aesthetics | <input type="checkbox"/> Agriculture Resources | <input type="checkbox"/> Air Quality |
| <input type="checkbox"/> Biological Resources | <input type="checkbox"/> Cultural Resources | <input type="checkbox"/> Geology / Soils |
| <input type="checkbox"/> Hazards & Hazardous Materials | <input type="checkbox"/> Hydrology / Water Quality | <input type="checkbox"/> Land Use / Planning |
| <input type="checkbox"/> Mineral Resources | <input type="checkbox"/> Noise | <input type="checkbox"/> Population / Housing |
| <input type="checkbox"/> Public Services | <input type="checkbox"/> Recreation | <input type="checkbox"/> Transportation / Traffic |
| <input type="checkbox"/> Utilities / Service Systems | <input type="checkbox"/> Mandatory Findings of Significance | |

DETERMINATION:

Prior to determination, the lead agency shall consult with all responsible and trustee agencies pursuant to Public Resources Code section 21080.3. Therefore a determination will be made once comments from this early consultation have been received and considered and this initial evaluation has been completed.

16. Issues:

These issues are currently being considered by Lahontan Water Board staff. Agency and public input are encouraged.

1. What type of monitoring for what project types is best and/or reasonable for verifying water quality protection?
2. Should the Lahontan Water Board consider reducing or eliminating monitoring and reporting requirements for certain types of vegetation management projects? What types of projects?
3. What types of projects and under what conditions should be transferred to TRPA for review and permitting?

Available Documents:

The existing Timber Waiver, Resolution No. R6T-2007-0008, may be found at the following webpage:

http://www.waterboards.ca.gov/lahontan/water_issues/programs/waste_discharge_requirements/timber_harvest/index.shtml

The existing *MOU Relating to Procedures for Review of Activities Conducted on Lands Administered by the United States Forest Service, Lake Tahoe Basin Management Unit, Between the California Regional Water Quality Control Board, Lahontan Region, and the United States Forest Service, Lake Tahoe Basin Management Unit* (2003), may be found at the following webpage:

http://www.waterboards.ca.gov/lahontan/water_issues/programs/waste_discharge_requirements/timber_harvest/index.shtml

To review the *Management Agency Agreement between the State Water Resources Control Board, State of California, and the Forest Service, United States Department of Agriculture* (1981), may be found at the following webpage:

http://www.waterboards.ca.gov/lahontan/water_issues/programs/waste_discharge_requirements/timber_harvest/index.shtml